

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN ALLEN BRADSHAW, SR.,

Defendant-Appellant.

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UNPUBLISHED

March 22, 2005

No. 251878

Berrien Circuit Court

LC No. 2002-412312-FC

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from the sentences imposed on his convictions of domestic assault, second offense, MCL 750.81a(3), and felonious assault, MCL 750.82. We affirm.

A jury convicted defendant of domestic assault, second offense, felonious assault, and resisting or obstructing a police officer after hearing evidence that defendant struck complainant, his wife, numerous times on all parts of her body with his fists, a baseball bat, and a metal rod, that he unsuccessfully attempted to drag her outside their home, and that he then fled after the police arrived.

At sentencing, defendant objected to the scoring of Offense Variable (OV) 7, MCL 777.37, aggravated physical abuse, at fifty points, indicating that complainant was not treated with excessive brutality. The trial court declined to change the scoring of OV 7, and sentenced defendant as a fourth habitual offender to concurrent terms of three years, ten months to fifteen years for domestic assault, second offense, four years, ten months to fifteen years for felonious assault, and three years, ten months to fifteen years for resisting or obstructing a police officer.

In calculating the sentencing guidelines the trial court has discretion to determine the number of points to be scored, provided that evidence in the record supports a particular score. A scoring decision for which there is any evidence in the record will be upheld. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002).

Offense variable 7 provides for the scoring of fifty points if a victim is treated with excessive brutality.<sup>1</sup> Defendant argues that he is entitled to be resentenced on his convictions of domestic assault, second offense, and felonious assault because the trial court abused its discretion by scoring OV 7 at fifty points in that there was insufficient evidence that complainant was treated with excessive brutality.<sup>2</sup> We disagree and affirm defendant's sentences. No authority holds that a victim's injuries must be at least as serious as those suffered by the victim in *People v Hernandez*, 443 Mich 1; 503 NW2d 629 (1993), abrogated in part on other grounds, *People v Mitchell*, 454 Mich 145, 176; 560 NW2d 600 (1997), to support the scoring of OV 7 at fifty points for excessive brutality. Evidence in the record demonstrated that defendant struck complainant about her head and body with his fists, a baseball bat, and a metal rod, choked her, and attempted to drag her outside their home. The assault, which lasted twenty to thirty minutes, left complainant with visible injuries, including strangulation marks on her neck, and bruises, an abrasion, and a hematoma. Evidence in the record supported the trial court's scoring of OV 7 at fifty points for excessive brutality; therefore, we must uphold the trial court's scoring decision. *Hornsby, supra*. Defendant is not entitled to resentencing.

Affirmed.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Peter D. O'Connell

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<sup>1</sup> Fifty points may also be scored if a victim was treated with sadism, torture, or "conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37(1)(a). The trial court's remarks indicate that it scored OV 7 at fifty points based on a finding that defendant treated complainant with excessive brutality.

<sup>2</sup> Offense variable 7 was inapplicable to defendant's sentence for resisting or obstructing a police officer. Defendant does not challenge his sentence for that offense.